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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,950	03/15/2004	Hongyu Wu	37469-8001.US01	2929

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EXAMINER

HEITBRINK, JILL LYNNE

ART UNIT	PAPER NUMBER
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1791

MAIL DATE	DELIVERY MODE
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12/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/801,950		WU, HONGYU	
	Examiner		Art Unit	
	Jill L. Heitbrink		1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20,57 and 59-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20,57 and 59-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of: *
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 10, 11, 57 and 59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 1 is unclear as to whether the limitation as to the forming of channels for evacuation of gas from the vacuum packaging bag is being made.
4. Claim 10 states that the extruding is over a patterned cooling plank and is unclear as it is dependent from claim 1 which extrudes the material onto a spinning cooling roll.
5. Claims 57 and 59 "Said method" should be changed to "The method".

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-20, 57, 59-63 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 39-46 of copending Application No. 11/058925. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims may include peelable film.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-20, 57, 59-63 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12-19 of copending Application No. 11/185536. Although the conflicting claims are not identical, they are not patentably distinct from each other because the roller is cooled and the materials are extruded.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-3, 7-9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aizawa (Pat. No. 5,928,762) taken together with Taunton (Pat. No. 2,778,173).

11. Aizawa discloses the coextrusion of a first material 12 and a second material 13 onto a spinning cooling roll 15 which applies a pattern to the multilayer film, see abstract and col. 7, lines 18-28. Taunton discloses an airtight package with channels for evacuation of gas from the vacuum packaging bag. The size of the pattern in Aizawa JP'377 being capable of forming channels to evacuate gas would have been obvious since the pattern is of a visible size. The pattern being operable to form channels suitable for evacuation of gas from a vacuum packaging bag made of the multilayer film would have been obvious to a person of ordinary skill in the art since making packaging bag of multilayer film of similar material, i.e. olefin resin, with embossed surfaces would depend upon the desired use of the manufactured film.

12. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aizawa (Pat. No. 5,928,762) taken together with Taunton (Pat. No. 2,778,173), as applied in claim 1-3 above, and in view of Marzolf (US 3908070).

Marzolf (US 3908070) teaches a multilayered thermoplastic film formed by coextrusion including applying an adhesive layer between the inner-barrier layer and outer rigid (structural layer/second layer) (abstract and col. 4, lines 58-67 and col. 5, lines 14-17). Therefore it would have been obvious to one of ordinary skill in the art at

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the time the invention was made to include an adhesive layer between the film layers, as taught by Marzolf (US 3908070), in the method of Aizawa because an applied adhesive provides better adhesion between juxtaposed layers. Because both of the references are concerned with a similar technical field, namely that of manufacturing multi-layered films, one would have a reasonable expectation of success from the combination.

Marzolf (US 3908070) teaches a multilayer film including an outer rigid olefin layer (structural layer/ second layer) adhered to a nylon layer further adhered to a barrier layer (first layer) (col. 4, lines 65-67 and col. 5, lines 1-17; 40-61). Aizawa discloses the use of a base layer 1 which would have been similar to a structural layer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an adhesive to a structural layer because a structural layer helps the film retain shape and add protection and the adhesive would maintain better adhesion.

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aizawa (Pat. No. 5,928,762) taken together with Taunton (Pat. No. 2,778,173), and in view of Marzolf (US 3908070), as applied above in claims 4 and 5 above, and further in view of Mak (US 6799680).

Mak (US 6799680) teaches a composite material (multi-layer film) embossed (application of pattern) by a die to form the channels (pattern) on all layers of the layered structure (film) (Figs. 7 and 8 and col. 5, lines 32-47). Therefore it would have

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been obvious to one of ordinary skill in the art at the time the invention was made to include embossing all layers of the composite (multi-layered) structure (film) in the method of Aizawa and Taunton because the plurality of layers in the channels support the channels upon evacuation of air.

14. Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aizawa (Pat. No. 5,928,762) taken together with Taunton (Pat. No. 2,778,173), in view of Mak (US 6799680).

15. Aizawa discloses the coextrusion of a first material 12 and a second material 13 onto a spinning cooling roll 15 which applies a pattern to the multilayer film, see abstract and col. 7, lines 18-28. Taunton discloses an airtight package with channels for evacuation of gas from the vacuum packaging bag. The size of the pattern in Aizawa JP'377 being capable of forming channels to evacuate gas would have been obvious since the pattern is of a visible size. The pattern being operable to form channels suitable for evacuation of gas from a vacuum packaging bag made of the multilayer film would have been obvious to a person of ordinary skill in the art since making packaging bag of multilayer film of similar material, i.e. olefin resin, with embossed surfaces would depend upon the desired use of the manufactured film.

Mak (US 6799680) teaches a composite material (multi-layer film) embossed (application of pattern) by a die to form the channels (pattern) on all layers of the layered structure (film) (Figs. 7 and 8 and col. 5, lines 32-47). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to

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include embossing all layers of the composite (multi-layered) structure (film), as taught by Mak (US 6799680), in the method of Aizawa taken together with Taunton because the plurality of layers in the channels support the channels upon evacuation of air. The references are concerned with a similar technical field, namely that of thermoplastic film packages, one would have a reasonable expectation of success from the combination.

Mak (US 6799680) teaches a vacuum sealed container including channels on the sides of the container forming an interconnecting network and allow a flow of air for evacuation of the bag (abstract), specifically, a zigzag pattern having an alternating width (Fig. 18a). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a varying width zigzag channels formed by the pattern, as taught by Mak (US 6799680), in the method of Aizawa taken together with Taunton because such pattern has the advantage that more of the surface area will be connected with the vacuum source (Mak col. 8, lines 60-67).

16. Claims 10, 11 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aizawa (Pat. No. 5,928,762) taken together with Taunton (Pat. No. 2,778,173), as applied in claims 1-3 above, in view of Bergevin et al. (US 2003/0070751 A1).

Bergevin et al. (US 2003/0070751 A1) teaches a method of manufacturing polymeric tubes including the use of a grooved cooling plates (patterned cooling planks) (paragraph [0044] and Fig. 5A, element 48). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the use of grooved cooling plates (patterned cooling planks), as taught by Bergevin et al., in the

method of Aizawa because the resulting structure obtains fewer wrinkles (Bergevin et al. paragraph [0075]). Because both of the references are concerned with a similar technical field, namely that of polymeric structures, one would have a reasonable expectation of success from the combination.

Bergevin et al. (US 2003/0070751 A1) teaches controlling the cooling plates (cooling planks) by circulating cold water supplied by a chiller system (paragraph [0044]). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made use a chiller system of circulating cold water to control cooling plate (cooling planks) as taught Bergevin et al. (US 2003/0070751 A1), in the method of Aizawa because the resulting structure obtains fewer wrinkles (Bergevin et al. paragraph [0075]).

17. Claims 60-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aizawa (Pat. No. 5,928,762) taken together with Taunton (Pat. No. 2,778,173) in view of Cancio et al. (US 4626574).

18. Aizawa discloses the coextrusion of a first material 12 and a second material 13 onto a spinning cooling roll 15 which applies a pattern to the multilayer film, see abstract and col. 7, lines 18-28. Taunton discloses an airtight package with channels for evacuation of gas from the vacuum packaging bag. The size of the pattern in Aizawa JP'377 being capable of forming channels to evacuate gas would have been obvious since the pattern is of a visible size. The pattern being operable to form channels suitable for evacuation of gas from a vacuum packaging bag made of the multilayer film

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would have been obvious to a person of ordinary skill in the art since making packaging bag of multilayer film of similar material, i.e. olefin resin, with embossed surfaces would depend upon the desired use of the manufactured film.

Cancio et al. (US 4626574) teaches a method of producing a polyethylene film by extrusion including the use of an air-knife and embossing the film impressing a pattern thereon (col. 6, lines 64-67 and col. 7, lines 1-9). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Aizawa to include the use of air-knife to impress a pattern thereon, as taught by Cancio et al. (US 4626574), because an air-knife produces a more uniform strain for embossing the pattern. Because both of the references are concerned with a similar technical field, namely that of polymeric films, one would have a reasonable expectation of success from the combination.

Further as to claims 61 and 63, it is interpreted that an inverse-vacuum is effectively a positive flow of air and as such is equivalent to an air-knife. Thus no further limiting weight is applied to the inverse-vacuum than the air-knife.

Conclusion

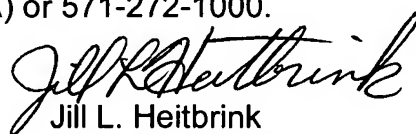
19. Applicant's arguments with respect to claims 1-20, 57 and 59-63 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill L. Heitbrink whose telephone number is (571) 272-1199. The examiner can normally be reached on Monday-Friday 9 am -2 pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jill L. Heitbrink
Primary Examiner
Art Unit 1791

jlh